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METROPOLITAN LIFE INSURANCE COMPANY,  
and METLIFE REAL ESTATE LENDING, LLC

10

11 UNITED STATES DISTRICT COURT  
12 EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

13 METROPOLITAN LIFE INSURANCE  
14 COMPANY, a New York corporation,

15 Plaintiff,  
v.

16 ACDF, LLC, a California limited liability  
company, *et al.*,

17 Defendants.

- 
- 18  Affects All Cases  
19  Affects Metropolitan Life Ins. Co. v. ACDF,  
LLC, et al., 1:24-cv-01261  
20  Affects Metropolitan Life Ins. Co. v. FNF  
Farms, LLC, et al., 1:24-cv-01226  
21  Affects Metropolitan Life Ins. Co. v. C & A  
Farms, LLC, et al., 1:24-cv-01230  
22  Affects Metropolitan Life Ins. Co. v.  
Maricopa Orchards, LLC, et al., 1:24-cv-  
01231  
23  Affects Brighthouse Life Ins. Co. v. Kamm  
South, LLC, et al., 1:24-cv-01232  
24  Affects Brighthouse Life Ins. Co. v.  
Manning Avenue Pistachios, LLC, et al.,  
1:24-cv-01233 Case No. 1:24-cv-01233  
25  Affects Brighthouse Life Ins. Co. v. ACDF,  
LLC, et al., 1:24-cv-01235  
26  Affects MetLife Real Estate Lending, LLC  
v. Panoche Pistachios, LLC, et al., 1:24-cv-  
01241
- 

Lead Case No. 1:24-cv-01261-KES-SAB

Consolidated with Case Nos:  
1:24-cv-01226; 1:24-cv-01230;  
1:24-cv-01231; 1:24-cv-01232;  
1:24-cv-01233; 1:24-cv-01235; and  
1:24-cv-01241

**MOTION TO CONTINUE  
RECEIVERSHIPS**

Date: January 13, 2024

Time: 1:30 pm (PT)

Dept.: Courtroom 6, 7th Floor

## **MOTION TO CONTINUE RECEIVERSHIPS**

## I. INTRODUCTION

Plaintiffs Metropolitan Life Insurance Company, MetLife Real Estate Lending Company, LLC, and Brighthouse Life Insurance Company (collectively, “Plaintiffs”) respectfully request a continuation of their respective Agreed Orders Appointing Receiver and for Preliminary Injunction (“Receivership Orders”<sup>1</sup>), administered by receiver Phillip Christensen (the “Receiver” and “Receiverships”), currently in effect pursuant to the Receivership Orders filed in related and administratively consolidated Case Nos.: 1:24-cv-01261; 1:24-cv-01226; 1:24-cv-01230; 1:24-cv-01231; 1:24-cv-01232; 1:24-cv-01233; 1:24-cv-01235; and 1:24-cv-01241 (the “Receivership Cases”).

The appointment of the Receiver was, and continues to be, necessary to conserve, maintain, and manage the respective Receivership Property<sup>2</sup> that is, in each case, facing irreparable harm and imminent danger of diminished value. Plaintiffs satisfied, and continue to satisfy, the applicable standard for appointment of a receiver under federal law. The Receiverships should continue because 1) the Receivership Property remains subject to irreparable harm; 2) the Receiver continues to develop strategies to manage and preserve the Receivership Property, which is critical for the 2025 crop and critical to preserving the value of Plaintiffs' security interests (collateral); and 3) the Receiver has proved effective at the preservation of assets and gathering critical information for further preservation and management.

While the Receiverships would continue until further notice, Plaintiffs are open to periodic Receivership Status Conferences every 90 days, should the Court find those useful.

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<sup>1</sup> The Receivership Orders can be found at the following docket numbers: 1:24-cv-01261 (Dkt. 45); 1:24-cv-01226 (Dkt. 18); 1:24-cv-01230 (Dkt. 39); 1:24-cv-01231 (Dkt. 17); 1:24-cv-01232 (Dkt. 20); 1:24-cv-01233 (Dkt. 22); 1:24-cv-01235 (Dkt. 22); and 1:24-cv-01241 (Dkt. 18).

<sup>2</sup> Each of the Receivership Orders (*see* fn. 1) describe the property and collateral at issue in each respective Receivership Order at ¶ 2.

1       **II. FACTUAL BACKGROUND**

2           **A. Appointment of the Receiver Phillip Christensen.**

3           In eight Receivership Cases, Plaintiffs filed Complaints alleging (1) Breach of Loan  
 4           Agreement; (2) Breach of Guaranty; (3) Judicial Foreclosure; (4) Specific Performance and  
 5           Appointment of Receiver; (5) Injunctive Relief; and (6) Replevin against borrower and guarantor  
 6           defendants (the “Defendants”).

7           Beginning on October 22, 2024 through November 21, 2024, Plaintiffs filed *Ex Parte*  
 8           Motions for Appointment of Receiver and for Preliminary Injunction in each Receivership Case.

9           Beginning with *Metropolitan Life Ins. Co. v. ACDF, LLC, et al.*, 1:24-cv-01261, on  
 10          November 7, 2024 and through December 4, 2024, Plaintiffs in the Receivership Cases caused to  
 11          have entered the Receivership Orders, appointing Phillip Christensen of Agriglobe LLC as receiver  
 12          “in order to preserve perishable agriculture and property and to maximize the recovery to creditor-  
 13          Plaintiff....” (Receivership Orders, ¶ C.)

14          As part of the Receiver’s duties, the Receiver is authorized and directed to “take possession  
 15          of, manage, control and collect all present and future [Receivership Property] ... and to sell or  
 16          otherwise liquidate or dispose of any or all of the [Receivership Property] by public or private sale  
 17          or such other method as deemed appropriate by the [Receiver] exercising business judgment.”  
 18          (Receivership Orders, Power and Duties of the Receiver, ¶¶ 5-7.)

19           **B. The Receivership Property Remains Subject to Irreparable Harm and  
 20           Defendants Remain in Default.**

21          The Defendants’ defaults and financial strain that precipitated the Complaints and  
 22          Receivership Orders have persisted. No Defendant has contested any of the recent Receivership  
 23          Orders on any grounds that the Orders are unnecessary or that financing has been secured to assist  
 24          them with business operations. Many of the same Defendants in these cases are subject to additional  
 25          suits for breach of loan agreements and appointment of receivers (see *The Prudential Insurance*  
 26          *Company of America et al. v. ACDF, LLC et al.*, 1:240-cv-01102 and *U.S. Bank National*  
 27          *Association v. Touchstone Pistachio Company, LLC et al.*, 1:24-cv-0115) and have recently been  
 28          subject to additional suits on the same bases (see *American Equity Investment Life Insurance*

1      *Company v. Maricopa Orchards, LLC et al.*, 1:24-cv-1406 and *Federal Agricultural Mortgage*  
 2      *Corporation v. Assemi Brothers, LLC et al.*, 1:24-cv-1455). Defendants' financial strain and lack  
 3      of operating cash flow places the collective Receivership Property in distress and serious peril.  
 4      (Declaration of Phillip Christensen ("Receiver Decl.") ¶ 3.) There has been and will continue to  
 5      be, if the Receiverships are not continued, deferred maintenance of equipment necessary to  
 6      agricultural operations and deferred cultural maintenance of biological assets on Receivership  
 7      Property due to Defendants' financial distress. (Receiver Decl. ¶ 4.) The following needs to occur  
 8      in the coming months or else the biological assets on the Receivership Property will be damaged  
 9      or destroyed before the 2025 harvest even arrives: post-harvest fertility; post-harvest soil  
 10     amendments; winter sanitation (removal of any crop remaining on the trees); dormant insecticide  
 11     spray applications; vertebrate control; pruning; marketing and contracting of the 2025 crop; and  
 12     general repairs and maintenance to the irrigation systems and other infrastructure. (Receiver Decl.  
 13     ¶ 5.) In the case of pistachios, those are especially vulnerable because they are an "every other year  
 14     bumper crop" and the 2024 harvest was a low-yield harvest. (Receiver Decl. ¶ 6.) Adequate  
 15     preparation is required for the 2025 harvest (the bumper year), but Defendants do not have the  
 16     financial ability to prepare, protect, and harvest. (Receiver Decl. ¶ 7.) The Receiver will ensure the  
 17     preparation, protection, and harvest of such vulnerable crops. (Receiver Decl. ¶ 8.)

18        As a result of the foregoing, there is manifest danger of loss, deterioration, and diminution  
 19        of the collective Receivership Property, which, along with the revenue generated by its operations,  
 20        are the primary sources for repayment of loans, and Plaintiffs, as an interested and secured party  
 21        that has asserted its rights, is threatened with material losses and injuries for which it has no  
 22        adequate remedy at law against Defendants.

### 23        **III. LEGAL ARGUMENT**

#### 24        **A. Legal Standard**

25        "The decision on whether to terminate a receivership turns on the facts and circumstances  
 26        of each case, including any relevant equitable considerations, particularly absent any statutory  
 27        limitations on the court's power to terminate a receivership." *WB Music Corp. v. Royce Int'l*  
 28        *Broad. Corp.*, 47 F.4th 944, 953 (9th Cir. 2022) (quoting 65 Am. Jur. 2d Receivers § 94 (2022)).

1 In this regard, “a district court’s power to supervise an equity receivership and to determine the  
 2 appropriate action to be taken in the administration of the receivership is extremely broad.”  
 3 *S.E.C. v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986).

4 Federal law governs the appointment of a receiver in a diversity case. *Nat'l P'ship Inv.*  
 5 *Corp. v. Nat'l Hous. Dev. Corp.*, 153 F.3d 1289, 1291-1292 (11<sup>th</sup> Cir. 1998); *New York Life Ins.*  
 6 *Co. v. Watt West Investment Corp.*, 755 F. Supp. 287 (E.D. Cal. 1991). Federal Rule of Civil  
 7 Procedure 66 provides in relevant part,

8 The practice in the administration of estates by receivers or by other similar  
 9 officers appointed by the court shall be in accordance with the practice heretofore  
 followed in the courts of the United States or as provided in rules promulgated by  
 10 the district courts. In all other respects the action in which the appointment of  
 a receiver is sought or which is brought by or against a receiver is governed  
 11 by these rules.

12 “Indeed, as the Eleventh Circuit reasoned in *National Partnership*, ‘to the extent Rule 66  
 13 dictates what principles should be applied to federal receiverships, courts must comply with the  
 14 Rule even in the face of differing state law.’” *Canada Life Assur. Co. v. LaPeter*, 563 F.3d 837,  
 15 842-843 (9th Cir. 2009) (*quoting Nat'l P'ship Inv. Corp. v. Nat'l Hous. Dev. Corp.*, 153 F.3d 1289  
 16 at 1291 (11th Cir. 1998)).

17 According to federal law, the appointment of a “receiver is an extraordinary equitable  
 18 remedy” and must be used with caution. *Id.* at 844 (*quoting Aviation Supply Corp. v. R.S.B.I.*  
 19 *Aerospace, Inc.*, 999 F.2d 314, 316 (8th Cir. 1993)). “However, there is ‘no precise formula for  
 20 determining when a receiver may be appointed’.” *Id.* Instead, federal courts consider a variety of  
 21 factors when determining whether to appoint a receiver, including:

- 22       1. Whether the party seeking the appointment has a valid claim,
- 23       2. Whether there is fraudulent conduct or the probability of fraudulent conduct  
             by the defendant,
- 24       3. The property is in imminent danger of being lost, concealed, injured,  
             diminished in value or squandered,
- 25       4. Whether legal remedies are inadequate,

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- 1       5. Whether the harm to the plaintiff by denial of the appointment would  
 2           outweigh the injury to the party opposing appointment,  
 3       6. The plaintiff's probable success in the action and the possibility of  
 4           irreparable injury to plaintiff's interest in the property, and  
 5       7. Whether the plaintiff's interests sought to be protected will in fact be well-  
 6           served by receivership.

7       *Id.*; 12 Wright Miller & Marcus Federal Practice & Procedure: Civil, § 2983 (2d ed. 2011); *see also*  
 8       *New York Life Ins. Co.*, 755 F. Supp. 287 (E.D. Cal. 1991) (appointing a receiver for real property  
 9       in circumstances similar to this case).

10      At to the first factor in each case, Plaintiffs have filed Complaints alleging Defendants'  
 11     defaults under the respective Loan Documents, as those documents are defined in the pleadings.<sup>3</sup>  
 12     The obligations due and owing from Defendants continue to accrue. Moreover, third-party filings  
 13     more recently filed in November, such as *American Equity Investment Life Insurance Company v.*  
 14     *Maricopa Orchards, LLC et al.*, 1:24-cv-1406 and *Federal Agricultural Mortgage Corporation v.*  
 15     *Assemi Brothers, LLC et al.*, 1:24-cv-1455), continue to accrue showing that, not only have  
 16     Defendants' financial problems leading to Receiverships continued, but are exacerbated. These  
 17     defaults have no sign of cure or abatement. Moreover, Defendants expressly consented to the  
 18     appointment of a receiver in the event of a default in at least two Loan Documents in each case: the  
 19     Loan Agreements and Deeds of Trust.<sup>4</sup> Under the Loans and Deeds of Trust, pursuant to the

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21      <sup>3</sup> See Complaints, Loan Documents: 1:24-cv-01261 (Dkt. 1, Factual Background, section A); 1:24-  
 22     cv-01226 (Dkt. 1, Factual Background, section A); 1:24-cv-01230 (Dkt. 1, Factual Background,  
 23     section A); 1:24-cv-01231 (Dkt. 1, Factual Background, section A); 1:24-cv-01232 (Dkt. 1, Factual  
 24     Background, section A); 1:24-cv-01233 (Dkt. 1, Factual Background, section A); 1:24-cv-01235  
 25     (Dkt. 1, Factual Background, section A); and 1:24-cv-01241 (Dkt. 1, Factual Background, section  
 26     A).

27      <sup>4</sup> See Motion for Appointment of Receiver and for Preliminary Injunction regarding Borrowers'  
 28     written agreements establishing entitlement to the appointment of a Receiver: 1:24-cv-01261 (Dkt.  
 29     11, Section III (Legal Argument), subsection a(1)); 1:24-cv-01226 (Dkt. 12, Section III (Legal  
 30     Argument), subsection a(1)); 1:24-cv-01230 (Dkt. 13, Section III (Legal Argument), subsection  
 31     a(1)); 1:24-cv-01231 (Dkt. 15, Section III (Legal Argument), subsection a(1)); 1:24-cv-01232 (Dkt.  
 32     17, Section III (Legal Argument), subsection a(1)); 1:24-cv-01233 (Dkt. 18, Section III (Legal  
 33     Argument), subsection a(1)); 1:24-cv-01235 (Dkt. 20, Section III (Legal Argument), subsection  
 34     a(1)); and 1:24-cv-01241 (Dkt. 16, Section III (Legal Argument), subsection a(1)).

1 respective “Rights and Remedies on Default,” Plaintiffs have the right to have a receiver appointed  
 2 to:

3 take possession of any or all of the Property, with the power to protect and  
 4 preserve the Property, to operate the Property preceding foreclosure or sale, to  
 5 collect the Proceeds from the Property and apply the Proceeds, over and above  
 6 cost of the receivership, against the Indebtedness. Beneficiary may apply to any  
 7 court of competent jurisdiction for the appointment of a receiver or receivers for  
 8 the Property and of all the earnings, revenues, rents, issues, profits and income  
 9 therefrom, ex parte, without notice, and without regard to the sufficiency or value  
 10 of any security for the obligations secured hereby or the solvency of any party  
 11 bound for its payment, the expenses of which shall be secured by this Deed of  
 12 Trust. The receiver may serve without bond if permitted by law.

13 The first factor weighs heavily in favor of continuing the Receiverships because  
 14 Defendants’ financial distress and bases for Plaintiffs claims are substantial and ongoing.

15 As to the second factor relating to fraudulent conduct, another receiver in a related action  
 16 (*see The Prudential Insurance Company of America et al. v. ACDF, LLC et al.*, 1:240-cv-01102)  
 17 acquired evidence that Assemis (“Guarantor Defendants” in the Complaints) improperly  
 18 transferred water and failed to pay water invoices.<sup>5</sup> The continuation of the Receiverships will  
 19 ensure additional information is collected regarding potential fraudulent conduct.

20 As to the third factor (closely associated here with the sixth, and seventh factors), the  
 21 Defendants’ continued financial distress places the Receivership Property in danger of irreparable  
 22 injury, loss, deterioration, and diminution, which, along with the revenue the Receivership Property  
 23 generates by its operations, are the primary sources for repayment of obligations owed to Plaintiffs  
 24 via the Loan Documents at issue. The Plaintiffs’ interests are well-served by the Receiverships  
 25 because the Receiver is experienced in the maintenance, management, and daily operation of  
 26 agricultural properties similar to the Receivership Property, and, together with the Receiver’s  
 27 employees, contractors, and professionals, in consultation with the Plaintiffs and other interest  
 28 parties, the Receiver continues to develop strategies to preserve and maintain the Receivership

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26 <sup>5</sup> See Declaration of Jeremy Rasmussen In Support Of Motion for Appointment of Receiver and  
 27 for Preliminary Injunction and accompanying Exhibit 1: 1:24-cv-01226 (Dkt. 12-3); 1:24-cv-01230  
 28 (Dkt. 13-3); 1:24-cv-01231 (Dkt. 15-3); 1:24-cv-01232 (Dkt. 17-13); 1:24-cv-01233 (Dkt. 18-3);  
 1:24-cv-01235 (Dkt. 20-3); and 1:24-cv-01241 (Dkt. 16-3).

1 Property, ensuring that post-harvest activities and infrastructure are in place for future harvests.  
 2 (Receiver Decl. ¶ 9.)

3 As to the fourth factor, the legal remedies are inadequate given the circumstances. The  
 4 collective Receivership Property is under immediate threat of damage, which would damage any  
 5 potential for future crop harvests. (Receiver Decl. ¶ 3.) A money judgment is meaningless because  
 6 Defendants appear to be collectively severely insolvent, and the collective Receivership Property  
 7 requires immediate and sustained management and preservation that extends beyond a temporary  
 8 cash flow from a judgment. This factor weighs in favor of continuation.

9 As to the fifth factor, Plaintiffs note that there were extensive meet-and-confer efforts with  
 10 represented Defendants' counsel to arrive at the agreed Receivership Orders.<sup>6</sup> Moreover, here,  
 11 there is no risk of injury to a party that could or would oppose appointment because it can only  
 12 benefit Defendants to preserve as much of the value of the Receivership Property as possible. The  
 13 Receiver is well-suited to preserve the Receivership Property for the benefit of all parties in interest.

14 In sum, **all seven factors weigh in favor of the continuation** of the Receiverships to  
 15 preserve Plaintiffs' interests and rights and to prevent further loss and irreparable harm to the  
 16 collective Receivership Property.

#### 17 **IV. CONCLUSION**

18 Based upon all of the foregoing factors, pursuant to Federal Rule of Civil Procedure 66,  
 19 Plaintiffs respectfully request that the Court enter an Order continuing the Receiverships.

20 Plaintiffs respectfully request that the Agreed Orders Appointing Receiver and for  
 21 Preliminary Injunction currently in effect in related and administratively consolidated Case Nos.:  
 22 1:24-cv-01261 (Dkt. 45); 1:24-cv-01226 (Dkt. 18); 1:24-cv-01230 (Dkt. 39); 1:24-cv-01231 (Dkt.  
 23 17); 1:24-cv-01232 (Dkt. 20); 1:24-cv-01233 (Dkt. 22); 1:24-cv-01235 (Dkt. 22); and 1:24-cv-  
 24 01241 (Dkt. 18), be continued until further Court Order.

25 Plaintiffs further state that they are amenable to a Status Conference Re Receiverships on

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 27 <sup>6</sup> See Declaration of Thomas A. Woods In Support Of Ex Parte Application for Motion for  
 28 Appointment of Receiver and for Preliminary Injunction: 1:24-cv-01261 (Dkt. 12-1); 1:24-cv-  
 01226 (Dkt. 13-1); 1:24-cv-01230 (Dkt. 13-1); 1:24-cv-01231 (Dkt. 15-1); 1:24-cv-01232 (Dkt.  
 17-1); 1:24-cv-01233 (Dkt. 18-1); 1:24-cv-01235 (Dkt. 20-1); and 1:24-cv-01241 (Dkt. 16-1).

1 Monday, April 14, 2025 (or as soon thereafter as the Court deem appropriate), at 1:30 p.m., in  
2 Courtroom 6, 7th Floor, of the above-referenced Court.

3 DATED: December 16, 2024

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